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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADONNA FROMETA,

5

Plaintiff,

6

-against-

07 CIV. 6372

7

MARIO E. DIAZ-DIAZ, ALL AMERICAN
HAULERS RECYCLING,

8

Defendants.

9

- - - - - X

10

HELD AT:

Wilson, Elser, Moskowitz,

11

Edelman & Dicker, LLP

3 Gannett Drive

12

White Plains, New York 10604

May 9th, 2008

13

8:00 a.m.

14

15

Deposition of ANDREW M. G. DAVY,

16

M.D., a non-party witness, pursuant to

17

Subpoena, held at the above time and place

18

before a Notary Public of the State of New

19

York.

20

21

22

23

24

Lisa M. Prentice,

25

Shorthand Reporter

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2 A P P E A R A N C E S:

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IT IS HEREBY STIPULATED AND
AGREED, by and between the attorneys for the
respective parties herein, that the sealing

and

filing of the within deposition be waived;

that

such deposition may be signed and sworn to
before any officer authorized to administer an
oath, with the same force and effect as if

14

signed and sworn to before the officer before

16

whom said deposition is taken.

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IT IS FURTHER STIPULATED AND
AGREED, that all objections, except as to
form,

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are reserved to the time of trial.

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ANDREW M. G. DAVY, M.D.,
stating his business address

3

as

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1513 Voorhies Avenue,

Brooklyn,

5

New York, 11235, having been

6

duly sworn by Notary Public,

7

Lisa M. Prentice, testified as

8

follows:

9

MR. PLATTA: It's 8:00.

10

MR. MILLER: 8:02 to be exact.

11 EXAMINATION BY

12 MR. COFFEY:

13

Q. Good morning, Doctor.

14

A. Good morning.

15

Q. And what's your name?

16

A. Andrew M. G. Davy.

17

Q. What's your present home address?

18

A. Home address? 246 South

Ridgewood

19 Road, South Orange, New Jersey, 07079.

20

Q. And are you employed?

21

A. Yes.

22

Q. By whom?

23

A. By me.

24

Q. And where is your office?

25

A. My main office is in Brooklyn,

New

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1 ANDREW M.G. DAVY, M.D.

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2 York.

3 Q. Do you have any other offices?

4 A. Yes, I have offices in Staten
5 Island, the Bronx and two other offices in
6 Brooklyn.

7 Q. Let's go through them, where is
8 your Staten Island office?

9 A. 1163 Forest Avenue, Staten
Island,

10 New York, 10310.

11 Q. And then in the Bronx?

12 A. 3262 Westchester Avenue, I don't
13 remember the zip code for that office.

14 Q. And who do you share that space
15 with, if anyone?

16 A. I rent space from Dr. Krishna,
and

17 there's a chiropractor there.

18 Q. What's his name?

19 A. Dr. Oshidar.

20 Q. How long have you been in the
21 Bronx office?

22 A. Maybe six years.

23 Q. And then how about out in Staten
24 Island, is that your own space or you rent?

25 A. Rent.

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1 ANDREW M.G. DAVY, M.D.

6

2 Q. Who do you rent it from?

3 A. I rent that from Drs. Abrams and
4 Piazza.

5 Q. Now, in Brooklyn you have three
6 offices?

7 A. Yes.

8 Q. Where are the three of them?

9 A. Main one is at 1513 Voorhies
10 Avenue, Lower Level, Brooklyn, New York,
11 11235,

11 next one is at 81 Willoughby Street, Fourth
12 Floor, Brooklyn, 11201, and then the third one
13 is on 476 Bay Ridge Parkway, I don't remember
14 the zip code there.

15 Q. And do you rent the 1513 Voorhies
16 property?

17 A. From Total Neuro Care upstairs
and

18 Downstate Medical, P.C. downstairs.

19 Q. Total Neuro Care and Downstate
20 what?

21 A. Medical.

22 Q. How about the 81 Willoughby
23 Street?

24 A. That's Oceanview Realty.

25 Q. And then 476 Bay Ridge?

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1 ANDREW M.G. DAVY, M.D.

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2 A. That's Bay Ridge Orthopedics.

3 Q. And what doctors in Bay Ridge

4 Orthopedics?

5 A. Dr. Howard Baum.

6 Q. Tell us a little bit about your

7 education, where did you get your

undergraduate

8 degree?

9 A. Columbia University School of

10 Engineering and Applied Science, 1986,

11 Bachelor's in Chemical Engineering.

12 Q. And your med degree?

13 A. Columbia University College of

14 Physicians and Surgeons, 1990.

15 Q. And currently where do you have

16 privileges at?

17 A. The Brooklyn Hospital Center.

18 Q. And who are they affiliated with?

19 A. New York Presbyterian Health Care

20 Network.

21 Q. How long have you had privileges

22 there?

23 A. Since 1998.

24 Q. Other than in your medical

career,

25 other than the Brooklyn Hospital Center, have

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1 ANDREW M.G. DAVY, M.D.

8

2 you had privileges at any other hospitals?

3 A. Yes. Strong Memorial Hospital,
4 University of Rochester, Rochester, New York,
5 Albany Medical Center, Albany, New York,
6 Providence Medical Center in Anchorage,

Alaska,

7 Interfaith Medical Center in Brooklyn,
Catholic

8 Medical Center, Brooklyn and Queens.

9 Q. Now, what years did you have
10 privileges at Interfaith?

11 A. Probably from '99 to maybe 2001
or
12 2002.

13 Q. And what happened there, what
14 happened with the privileges?

15 A. I was a per diem
anesthesiologist,

16 so I really don't know what happened to the
17 privilege, they probably just expired.

18 Q. And then at Catholic Medical
19 Center what years were you there?

20 A. I was there from, I think, '99 to
21 about 2002 or 2003 as the director of pain
22 management outpatient and I resigned that post
23 in about 2002.

24 Q. And do you have a delineation of
25 privileges?

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ANDREW M.G. DAVY, M.D.

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A. Yes.

3

Q. What does that entail?

4

A. I have admitting privileges through the department of surgery at the Brooklyn Hospital Center and I, also, have privileges through the Department of Anesthesiology that gives me freedom to do operative anesthesia on kids up to octogenarians. I, also, have pain management privileges to do routine injections, such as epidural steroids and advanced therapy such as intrathecal drug delivery systems, spinal cord stimulators and percutaneous discectomies.

15

16

Q. That's under which delineation, under the pain management?

17

A. Yeah.

18

19

Q. Now, how many beds are at this hospital?

20

A. I don't know.

21

Q. And is it a private hospital?

22

A. I think so, yes.

23

the

24

25

Q. Now, under the pain management the percutaneous discectomy procedures, do you own the Stryker device that you use?

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1 ANDREW M.G. DAVY, M.D.

10

2 A. No.

3 Q. Who does, does the hospital?

4 A. The hospital.

5 MR. PLATTA: Objection. You can
6 answer.

7 Q. What year did you first use a
8 Stryker device to do any procedures?

9 MR. PLATTA: Objection. You can
10 answer.

11 A. Well, maybe 2003 or 2002.

12 Q. Now, are you a shareholder in the
13 hospital?

14 A. No.

15 MR. PLATTA: Objection.

16 Q. As to 2002 or 2003 how did you
17 first learn about the Stryker device?

18 A. The Stryker rep came by --

19 MR. PLATTA: Note my objection.

20 A. -- and asked if I did
discography,

21 and he had a device that would allow me to do
22 percutaneous discectomies or disc
decompression

23 for contained disk herniations that would help
24 patients.

25 Q. And that was for contained disc

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1 ANDREW M.G. DAVY, M.D.

11

2 herniations?

3 A. Yes.

4 Q. What is a contained disc

5 herniation?

6 MR. PLATTA: Objection. You can
7 answer.

8 A. Contained disc herniation is sort
9 of like a disc bulge or a small disc

herniation

10 that on discography does not allow dye that's
11 injected in to the center of the disc to seep
12 out.

13 Q. So, this procedure and this
device

14 is used typically for disc bulges and small
15 disc herniations?

16 A. Yes.

17 MR. PLATTA: Objection. You can
18 answer.

19 Q. What would be a small disc
20 herniation?

21 MR. PLATTA: Objection. You can
22 answer.

23 A. In the lower back usually it's
24 disc herniation that's between six millimeter
25 to nine millimeter in size, and in the neck

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1 ANDREW M.G. DAVY, M.D.

12

2 there's no fixed dimension. There are some
3 other clinical criterias. There should be no
4 ongoing neurologic changes or deficits.

5 Q. So, what's an ongoing change or
6 deficit?

7 A. Bowel or bladder dysfunction.

8 MR. PLATTA: Objection.

9 A. Motor loss.

10 Q. What is no motor loss?

11 MR. PLATTA: Over objection.

12 A. No wasting of muscles, no loss of
13 motor strength that's -- that's motor strength
14 from zero to five out of five, so if it's two
15 out of five or less, then there's significant
16 motor dysfunction and you're not a candidate
17 for that.

18 Q. So, what is the criteria for a
19 candidate for that procedure?

20 A. Someone who has --

21 MR. PLATTA: Again, over
22 objection.

23 A. -- contained disc herniation with
24 most often radiating pain down an extremity
25 without any ongoing neurologic deficits.

0013

1 ANDREW M.G. DAVY, M.D.

13

2 Q. And, so, what did you do after
3 meeting the Stryker representative, did he ask
4 you to try it out, did you go for a training
5 seminar, how did you become more familiar with
6 that practice?

7 A. Yeah, I did go for training
8 seminar where I was then certified to do the
9 device -- to use the device, and then I
started

10 using the device.

11 Q. When you went to the training
12 seminar, where was that?

13 A. One was in Boston and one was in
14 -- I don't remember the first one, I don't
15 remember where the first one was.

16 Q. When you went to the one in
17 Boston, how long was that training seminar?

18 A. About a day.

19 Q. When you went to the one day
20 thing, was it a doctor who taught you or a
21 representative?

22 A. Yes, it was a doctor.

23 Q. Was it at a hospital or at a
24 seminar conference center?

25 A. One of the Harvard affiliated

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1 ANDREW M.G. DAVY, M.D.

14

2 hospitals.

3 Q. And what did they do, did you do

a

4 hands on part of it?

5 A. Yeah, they had lectures and then
6 they had a cadaver workshop.

7 Q. How many of you were in that
8 class?

9 A. Maybe ten.

10 Q. Now, this is when you were at
your

11 current hospital was when you were first
12 approached, the Brooklyn Hospital Center?

13 A. Yes.

14 Q. Were there any other doctors on
15 staff who were doing that procedure at the
16 time?

17 A. No.

18 Q. Now, currently at your hospital
19 are there any other doctors on staff doing
that
20 procedure?

21 A. I hear there's someone who
started

22 doing them recently.

23 Q. Now, at your current hospital do
24 you have any position other than admitting
25 privilege, like are you chief of any

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1 ANDREW M.G. DAVY, M.D.

15

2 department?

3 A. No.

4 Q. So, for this percutaneous
5 procedure which department does that fall
6 under, anesthesia or the surgical?

7 A. Anesthesia.

8 Q. Do you know why it would fall
9 under anesthesia and not surgery?

10 MR. PLATTA: Objection. You can
11 answer.

12 A. Actually, the chairman of surgery
13 signed off on it and they describe it as disc
14 aspiration so as not to interfere with the
15 orthopedic or neuro spine surgeon and their
16 designation.

17 Q. So, what's aspiration?

18 A. Taking out some of the disc.

19 MR. PLATTA: Objection.

20 A. Removal of some of the disc.

21 Q. What happened after you went to
22 the training, did you then say you liked this
23 and you decided to ask the hospital to start
24 doing these procedures or what was the
process?

25 A. Yes, I booked some cases, started

0016

1 ANDREW M.G. DAVY, M.D.

16

2 doing them, and then they added it to my
3 privileges.

4 Q. And did you work on getting that
5 equipment at the hospital, how did that

Stryker

6 device get to the hospital?

7 MR. PLATTA: Objection.

8 A. The Stryker rep was introduced to
9 the person who buys equipment and the

equipment

10 is bought by the hospital.

11 Q. Do you know how much that
12 equipment cost?

13 A. I think --

14 MR. PLATTA: Objection, but you
15 can answer.

16 A. \$2,000.

17 Q. So, it's a \$2,000 machine?

18 A. Yes.

19 Q. And did they give you medical
20 literature on those procedures?

21 A. Oh, yeah.

22 Q. What did they give you, did they
23 give you any books?

24 A. Case reports, they did give me a
25 few textbooks, research studies.

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1 ANDREW M.G. DAVY, M.D.

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2 Q. Do you still have any of the case
3 reports, textbooks or research studies?

4 A. Yeah, yes.

5 Q. Now, after you finished the
6 seminar and you went to the cadaver workshop,
7 you said you went to a second workshop at some
8 point?

9 A. Yes.

10 Q. What was done at the second
11 workshop?

12 A. We did -- the second workshop was
13 focussed on cervical discectomies, and the
14 first one was lumbar and cervical.

15 Q. And after that did you have to
16 write any reports to the hospital or any type
17 of memos asking to be able to participate in
18 this type of procedure?

19 A. No.

20 Q. Did you have any meetings?

21 MR. PLATTA: Objection. With
22 whom?

23 Q. Did you ever meet with anyone
from

24 the hospital to talk about that you were going
25 to start doing these procedures?

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1 ANDREW M.G. DAVY, M.D.

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2 A. I don't think so, I don't
3 remember.

4 Q. Did you have to write any type of
5 formal proposal asking to put this on to your
6 privileges?

7 A. No.

8 Q. How did that occur then, the head
9 of what department approved it?

10 A. Anesthesiology and surgery.

11 Q. Did you have to meet with the
head

12 of anesthesiology surgery or no?

13 A. No.

14 Q. What doctors currently is the
head

15 of anesthesiology?

16 A. Dr. Spencer Lubin.

17 Q. Lubin, L-U-B-I-N?

18 A. Yes.

19 Q. Who is the head of surgery?

20 A. Steven Carryl, C-A-R-R-Y-L.

21 Q. And the percutaneous procedure,
is

22 it typically an ambulatory procedure?

23 A. Yes.

24 Q. And approximately how many of
25 these procedures have you done since you've

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1 ANDREW M.G. DAVY, M.D.

19

2 started these procedures in 2002 or 2003?

3 A. Maybe between two and three
4 hundred.

5 Q. What is the cost for these
6 procedures?

7 A. There are several different
costs,

8 there's physician fees, I told you about the
9 equipment fees and, of course, there's a
10 hospital ambulatory surgery fee and the
11 anesthesiologist fees. My fees that I charge
12 is about -- for each level is about \$7,000 and
13 I get about -- about \$7,000.

14 Q. \$7,000 --

15 A. That's my charges, that's what I
16 charge. Different insurances will pay
17 differently.

18 Q. So, typically what insurances do
19 you deal most with would you say?

20 MR. PLATTA: Objection.

21 A. Workers' Comp.

22 Q. What is the Workers' Comp
23 reimbursement typically?

24 A. About --

25 MR. PLATTA: Objection.

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ANDREW M.G. DAVY, M.D.

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A. About \$2,500 per level -- for the first level I should say, the second level

it's

4

cut in half.

5

Q. Which other carriers are you familiar with their rates of reimbursement?

7

A. The no fault is the same as Workers' Comp in New York State and Medicare.

9

MR. PLATTA: Again, over objection.

10

11

A. Medicare pays, I think, about

\$400

12

to \$600 a level, I don't remember the exact number.

13

14

Q. Typically what are the equipment fees that are charged?

15

16

A. About \$2,000 for each equipment.

17

18

Q. And when you say for each equipment, what is that?

19

20

A. Because for -- if I do more than one level, I use different equipment -- different device.

21

22

23

Q. When you say different device, if memory serves me from what I read on the Stryker website, there's three different sizes that they recommend; is that correct?

24

25

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1 ANDREW M.G. DAVY, M.D.

21

2 A. Yes.

3 MR. PLATTA: Objection.

4 A. There's a short cervical, the
5 regular size, which I think is six inch, 1.5
6 millimeter, and then there's a nine inch, so
7 that's depending on what level you're doing
and

8 the patient's body habitus, but for each level
9 that I do because sterility is very important
10 when dealing with the disc because it's very
11 poorly vascularized, I use a brand new
12 decompressor for each level.

13 Q. Now, what is the cost from
Stryker

14 for each decompressor?

15 MR. PLATTA: Objection.

16 A. I don't know what they sell the
17 hospital.

18 Q. But the charge is typically about
19 \$2,000?

20 A. Yes.

21 Q. How much is the Workers' Comp
22 reimbursement for each piece of equipment?

23 A. I don't know.

24 MR. PLATTA: Objection.

25 Q. But it would be fair to say if

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1 ANDREW M.G. DAVY, M.D.

22

2 there's a reduction of what your fee charged
3 is, the rate of reimbursement is typically
4 lower?

5 MR. PLATTA: Objection.

6 MR. LUNDGREN: Objection.

7 A. I don't know. You'd have to ask
8 the hospital. I don't know.

9 Q. What is typically the hospital
10 fees?

11 A. I don't know.

12 Q. What is the anesthesiologist fee?

13 A. I don't know.

14 Q. As you understand from the
Stryker

15 representative or based upon your experience
16 what are the advantages of this procedure?

17 A. It avoids any major trauma to the
18 skin or bony tissue surrounding the disc. It
19 speeds up the healing process. It's less
20 invasive. It decreases the recurrence of
21 herniations that noted, documented on open
22 discectomies. Those are the advantages.

23 Q. And it does it have a high
success

24 rate?

25 A. If applied properly, yes.

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ANDREW M.G. DAVY, M.D.

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site

Q. And based on what the Stryker

3

says, the success rate is over ninety percent?

4

MR. PLATTA: Note my objection to

5

the prior question and, also, to this

6

one, as well.

7

A. Correct.

8

Q. In the two to three hundred that

9

you've done has the success rate mirrored what

10

the Stryker materials talk as the success

rate?

11

A. It's a little bit higher.

12

MR. PLATTA: Objection.

13

Q. About ten percent higher than

what

14

they say on their website?

15

A. Yes.

16

Q. As a procedure is it indicated

for

17

people who have degenerative changes?

18

A. Yes, if the degeneration or the

19

disc height is at least fifty percent

20

maintained, that's a consequence of

21

degeneration, then the patient is a candidate

22

for it as long as the other criterias hold

that

23

I mentioned earlier.

24

Q. That would, also, mean that there

25

was no compression essentially on the disc?

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1 ANDREW M.G. DAVY, M.D.

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2 MR. PLATTA: Objection.

3 A. No, no ongoing neurologic
deficit,

4 in other words, the pathology is stable,
that's

5 why it's done, for compression and impingement
6 but the pathology has to be stable.

7 Q. Now, have you ever testified in
8 Federal Court before?

9 A. Federal Court?

10 MR. PLATTA: Again, over
11 objection.

12 A. I don't think so. I don't
13 remember.

14 Q. Have you testified in State Court
15 before?

16 MR. PLATTA: Over objection.

17 A. Probably, yes.

18 Q. Approximately how many times?

19 MR. PLATTA: Over objection.

20 A. Three to five times, not much.

21 Q. Have they been for your patients?

22 MR. PLATTA: Objection.

23 A. Would State Court be like

Workers'

24 Comp?

25 Q. No. They are different, but I'll

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1 ANDREW M.G. DAVY, M.D.

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2 get to Workers' Comp.

3 MR. PLATTA: Since there is
4 ambiguity can you explain to the Doctor
5 what it means State Court versus

Workers'

6 Comp so we are clear on the record?

7 MR. COFFEY: I'll ask them
8 separately.

9 Q. State Court is the Supreme Court
10 and Workers' Comp Board is different.

11 MR. PLATTA: State Court, also,
12 means Civil Court, for example?

13 MR. LUNDGREN: New York State
14 Civil Courts?

15 MR. COFFEY: Yeah, New York Civil
16 Court.

17 A. Is it okay to make a distinction
18 personal injury cases versus Workers' Comp
19 cases?

20 Q. You can make that, if that makes
21 more sense to you, that's fine.

22 A. Yeah, about three I've done and
23 three personal injury.

24 Q. Three times?

25 A. Yes.

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1 ANDREW M.G. DAVY, M.D.

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2 Q. And who have they been for, for
3 patients of yours or for other people who have
4 retained you to testify as an expert?

5 MR. PLATTA: Over objection.

6 A. Patients.

7 Q. How many times --

8 A. Actually, both because patients
of

9 mine but I was retained as an expert witness
10 for the patient.

11 Q. You were retained by your patient
12 as an expert witness?

13 MR. PLATTA: Over objection.

14 A. Patient's attorney. I saw the
15 patient -- usually the scenario is I see the
16 patients under Workers' Comp and they have a
17 separate Workers' Comp attorney, and then at
18 some point near the end of their treatment I
19 get contacted by a separate attorney to
testify

20 in the third party.

21 MR. PLATTA: Please let the
record

22 reflect since there was no information
23 given to the witness in the very
24 beginning of this deposition I would
like

25 to remind the witness that he is
supposed

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ANDREW M.G. DAVY, M.D.

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to respond to the questions that are
being asked and only to the questions
that are being asked.

3

4

5

6

Q. How many times have you testified
in front of the Workers' Comp Board?

7

MR. PLATTA: Objection.

8

A. I lost count.

9

Q. More than fifty?

10

A. Yeah.

11

MR. PLATTA: Over objection.

12

Q. More than a hundred?

13

A. Yes.

14

MR. PLATTA: Objection to the

last

15

question, as well.

16

17

18

19

Q. Your testimony has been through
report and depositions and both over the phone
and in the Workers' Comp Board, all different
ways?

20

MR. PLATTA: Objection.

21

A. What do you mean by report?

22

23

24

Q. Have you given people permanency
reports and ratings when you've given reports
to the Workers' Comp Board?

25

A. Yes.

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1 ANDREW M.G. DAVY, M.D.

28

2 Q. And you've, also, given live
3 testimony?

4 A. Yes.

5 Q. Typically when we're talking
about

6 other procedures that you do, other than the
7 percutaneous discectomy what other procedures
8 do you do?

9 A. Epidural steroid injections,
10 diagnostic facet joint and facet nerve
11 injections, radio frequency lesioning of facet
12 nerves, spinal cord stimulator trials and
13 implantation of the permanent device if the
14 trial is successful, intrathecal drug trials
15 and implantation of intrathecal drug delivery
16 system if the trial is successful.

17 Q. So, let's just finish up the
18 Stryker procedure, approximately how many have
19 you done, you said you did about two to three
20 hundred procedures of those, how many have you
21 done in 2007 approximately?

22 A. Maybe sixty.

23 Q. Approximately sixty in 2007, how
24 many so far this year approximately?

25 A. I'm doing about twenty a month

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ANDREW M.G. DAVY, M.D.

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now.

3

Q. So, if you've done two to three hundred, it's starting to increase if you're doing about twenty a month now?

6

A. Yes.

7

Q. How long does that procedure typically take?

9

A. About fifteen minutes per level.

10

Q. And are your patients under local or general anesthesia?

12

A. In the lower back they are under what's called monitored anesthesia care which involves a local anesthetic at the site in addition to IV sedation. In the neck they do get sedated, but they are more awake and I do use local in the neck, also.

18

Q. When you say sedate, is that with general?

20

A. No.

21

Q. With local?

22

A. Yes, monitored anesthesia care.

23

Q. When you say you do epidural injections, approximately how many of those procedures do you do per year or per week?

25

0030

1 ANDREW M.G. DAVY, M.D.

30

2 A. About forty a week, forty
3 procedures with the thirty epidurals and maybe
4 ten facet.

5 Q. The facet injections, how many of
6 those, about ten a week you said?

7 A. Yeah.

8 Q. Where are the epidural injections
9 done, in your office or in the hospital?

10 A. In my office.

11 Q. How long do those take?

12 A. Three to six minutes.

13 Q. And you say you do radio
frequency

14 lesion testing?

15 A. Not testing, radio frequency
16 lesioning of facet nerves, yeah.

17 Q. And how many of those do you do?

18 A. I do about ten a month.

19 Q. And the spinal cord stimulator,
20 how often are you doing those?

21 MR. PLATTA: You mean for the
neck

22 or back?

23 Q. I'll go through the both, I'll
ask

24 you about the neck and then the back, if
that's

25 how you break them down.

0031

1 ANDREW M.G. DAVY, M.D.

31

2 A. I would break it down between
3 trial and implant.

4 Q. What's the difference between a
5 trial and implant?

6 A. Trial is temporary wires are
7 placed in the back or in the neck and secured
8 to the skin with sutures and the patient has

an

9 external device that's used to control the
10 stimulator, they keep it in for three to five
11 days, that's then removed. If the trial is
12 successful, then they go through a permanent
13 implant. So, I'm doing about between four to
14 six trials a month and implanting about --
15 success rate is about seventy-five percent so

a

16 quarter of those -- three quarters of those go
17 to implant, permanent implant.

18 Q. Why are some successful and some
19 not, is it based upon whether their spine
20 responds to it? I'm a little confused about
21 the difference.

22 A. Some patients -- most of the time
23 the patients don't like the tingling that's
24 created from the stimulator, the stimulation,
25 that's what I think most of the patients who

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1 ANDREW M.G. DAVY, M.D.

32

2 fail, and then there are those who the
3 stimulation increases their pain for some
4 reason.

5 Q. So, you, also, do the intrathecal
6 drug delivery?

7 A. Yes, that's very rare, I have not
8 done any trials this year. Last year I think
9 -- I don't think I did any trials last year
10 either, that's much less, maybe do one to two
a
11 year.

12 MR. PLATTA: Before 2007?

13 THE WITNESS: Yes.

14 Q. What is the purpose of the spinal
15 cord stimulators, what do they do?

16 A. They block pain by creating a
17 gentle paresthesia or tingle over the area
that
18 hurts, they do that by stimulating the spinal
19 cord, the dorsal column in the spinal cord and
20 stimulating beta fibers that in turn through
21 the gated system of the nervous system shuts
22 off transmission and painful fibers, A Delta
23 and C fibers, and they, also, cause the
release

24 of endogenous opiates that block pain.

25 Q. On the stimulators, what are your

0033

1 ANDREW M.G. DAVY, M.D.

33

2 doctor's fees for the temporary implants?

3 A. Per lead I think I charge about
4 \$6,000.

5 MR. PLATTA: What do you mean by
6 lead?

7 THE WITNESS: Electrode, each
lead

8 has -- actually, that's confusing, each
9 lead can have between four to eight
10 electrodes.

11 MR. PLATTA: Three to four?

12 THE WITNESS: Four to eight.

13 Q. Typically how many leads do
people

14 have in?

15 A. For lower back it's three leads,
16 and typically for the neck it's two leads but
17 sometimes -- there's now new technology where
18 the three lead system is preferred in both
19 areas, but typically it's two in the neck and
20 three in the lower back.

21 Q. So, your fee on a low back is
22 typically about \$18,000?

23 A. Remember, each successive lead is
24 cut in half because of what they call the
25 multiple surgery rule, so it would be --

0034

1 ANDREW M.G. DAVY, M.D.

34

2 Q. Then in half each successive
3 level?

4 A. Yes.

5 Q. What does the no fault and
6 Workers' Comp pay for those?

7 MR. PLATTA: Objection.

8 A. \$3,000 for the first lead and
half
9 for successive leads.

10 MR. LUNDGREN: That's for the
11 service, correct?

12 THE WITNESS: Physician's fees,
13 yes, these are physician's fees.

14 Q. It goes \$3,000, \$1,500, \$750?

15 A. No, \$3,000, \$1,500, \$1,500.

16 MR. PLATTA: That's no fault?

17 THE WITNESS: Workers' Comp.

18 Q. And when you do the difference
19 between the trial temporary implant, then they
20 go back for a permanent one?

21 A. Yes.

22 Q. And, now, is that a different
23 procedure?

24 A. It's a different procedure. That
25 procedure is typically done in the hospital
and

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35

2 requires an incision in the back, upper or
3 lower back as well as in one of the butt

cheeks

4 and three or two news leads are implanted in
5 addition to what's called a pulse generator,
6 which is the power source and the brain that
7 controls the stimulator leads.

8 Q. So, if someone comes back and the
9 trial is successful, say, on the seventy-five
10 percent success rate and they go back again,
11 they are paying again the whole fees?

12 A. Because the trial leads are
13 removed.

14 Q. You need to answer verbally, yes,
15 that's a second fee?

16 A. Repeat the question.

17 Q. When you go back and do the
18 permanent one, they have to pay again?

19 A. Yes.

20 Q. What is your fee for a pulse
21 generator, is that different than the per lead
22 price?

23 A. That I don't know offhand, but I
24 think my charges are about \$2,500, but that's,
25 also, cut in half because it's considered

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1 ANDREW M.G. DAVY, M.D.

36

2 multiple procedures.

3 Q. So, a pulse generator could be
4 \$2,500 but it's cut in half?

5 A. Yes, physician's fees, yes.

6 Q. Do you know what any of the other
7 charges are or you have no idea what the
8 hospital charges, anesthesiologist or
equipment

9 fees are for this procedure?

10 MR. PLATTA: Over objection.

11 A. The equipment fees I don't know
12 the exact numbers, but the leads can run from
13 \$4,000 per lead to \$7,000 per lead, and the
14 pulse generator can run as high as \$50,000.

15 MR. PLATTA: How much, the last
16 one?

17 THE WITNESS: \$50,000.

18 Q. Approximately what's your annual
19 income each year from the spinal cord
20 stimulator procedures and the percutaneous
21 discectomies?

22 MR. LUNDGREN: Objection.

23 MR. PLATTA: Objection.

24 A. Not enough, I don't know.

25 Q. Would it be more than a million?

0037

1 ANDREW M.G. DAVY, M.D.

37

2 MR. PLATTA: Objection.

3 A. I don't know.

4 Q. In your practice are there any
5 other doctors who practice with you?

6 A. No, five percent of my patients
7 get these implants, it's not a lot.

8 Q. But you're doing about six a
9 month?

10 A. I have a good practice.

11 Q. That's seventy-two people a year?

12 MR. PLATTA: Objection.

13 Counselor, his testimony speaks for
14 itself.

15 MR. COFFEY: You're running in to
16 my two hours now. Do you want to pay

for

17 the transcript? You can pay for the
18 transcript. Don't talk. If you want

to

19 place an objection, there's no talking
20 objections in Federal Court.

21 MR. PLATTA: That's fair enough.

22 MR. COFFEY: You've objected to
23 many questions that are meant to throw

me

24 off my game on stuff that you're just
25 objecting.

0038

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ANDREW M.G. DAVY, M.D.

38

2

MR. PLATTA: I would appreciate

it

3

if you look at the transcript before

for

4

your own office practice.

5

MR. COFFEY: Thank you.

6

MR. LUNDGREN: He's not being

7

evasive when he tells you how much,

8

there's a reason why he can't tell you

9

how much. How much is actually

10

reimbursed is an issue. He's not

trying

11

to be evasive to your questions.

12

Q. Would you know how much your

13

income is after you've been reimbursed?

14

A. For these devices?

15

MR. PLATTA: Objection.

16

Q. Overall for the procedures you do

17

each year?

18

A. You mean as a pain physician?

19

Q. Yes.

20

MR. PLATTA: Over objection.

21

A. My salaried income or gross

22

income?

23

Q. Well, depends, I guess we could

24

talk about what income is. If income is just

25

income or if income adds up being a

0039

1 ANDREW M.G. DAVY, M.D.

39

2 distribution, I don't know what we're talking.

3 Are you set up yourself or do you practice

4 under a corporation?

5 A. Yeah, I'm a corporation.

6 MR. PLATTA: Over objection.

7 Q. What's the corporation?

8 MR. PLATTA: Over objection.

9 A. Andrew M. G. Davy, M.D., P.C.

10 Q. So, you then give yourself an

11 income and then a distribution?

12 A. Yes.

13 MR. PLATTA: Over objection.

14 Q. Is your income over a million

15 dollars a year?

16 MR. PLATTA: Over objection.

17 A. No.

18 Q. Is your income over a half a

19 million dollars a year?

20 MR. PLATTA: Over objection.

21 A. No.

22 MR. LUNDGREN: Not to be

23 obstructive, but just because he bills

24 for something doesn't mean the

insurance

25 company doesn't fee code it down, it's

0040

1 ANDREW M.G. DAVY, M.D.

40

2 Medicare, that's why.

3 Q. Your total income, if we call it
4 salary, distribution, investment in medical
5 centers or any other way that you want
6 categorize income, is it more than a million
7 dollars?

8 MR. PLATTA: Over objection.

9 A. Me as an entity or the P.C.?

10 Q. We will add them both together
11 because here we are talking about different
12 things. I don't want to get in to taxes and
13 stuff like that, income from all sources
14 depending if it's invested or how it's
15 structured is it over a half a million dollars
16 a year?

17 MR. PLATTA: Over objection.

18 THE WITNESS: Do I have to answer
19 that?

20 Q. Yes.

21 MR. LUNDGREN: He can answer with
22 respect to if you're asking what's the
23 size of his business on a yearly volume
24 with respect to income to the P.C.,

I'll

25 let him answer that question.

0041

1 ANDREW M.G. DAVY, M.D.

41

2 Q. Answer that one.

3 MR. PLATTA: Over objection.

4 A. How much the P.C. made last year?

5 I don't know. The year before maybe little
6 over a million dollars gross P.C. income, not
7 my personal income.

8 Q. Who else is part of your P.C.?

9 MR. PLATTA: Over objection.

10 A. My overhead, my staff, my

11 equipment leasing, I have expenses.

12 Q. How many people are on your
staff?

13 MR. PLATTA: Over objection.

14 A. I have four full time staff,
three

15 part time and three independent contractors.

16 Q. What do the three independent
17 contractors do?

18 MR. PLATTA: Over objection.

19 A. Two are X ray technicians and one
20 is an administrative consultant.

21 Q. Do the X ray techs bill out
22 themselves or do they get paid out of their
23 gross?

24 MR. PLATTA: Over objection.

25 A. They get paid out of the gross.

0042

1 ANDREW M.G. DAVY, M.D.

42

2 Q. When we talk about the epidural
3 injections, what is the no fault and Workers'
4 Comp reimbursement rate typically for epidural
5 injections?

6 MR. PLATTA: Over objection.

7 A. About \$350.

8 Q. What do you charge for that?

9 A. About \$900.

10 Q. Now, when we go to a cervical
11 pump, when you charge for that there's
12 typically two leads?

13 A. Cervical stimulator?

14 Q. Cervical stimulator?

15 A. Typically two leads.

16 Q. And those leads are the same
17 pricing structure?

18 A. Same.

19 Q. That would be \$6,000 for the
20 first, then half in the successive levels?

21 A. Charges, yes.

22 Q. And the pulse generators, are
23 those the same prices?

24 A. Yes.

25 Q. Now, are the success rates the

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ANDREW M.G. DAVY, M.D.

43

2

same percentage for cervical versus low back

or

3

are you seeing a difference in your success

4

rates on the trials?

5

6

A. With the stimulator the success
rate is based on the pathology. If it's

7

complex regional pain syndrome, it's usually

8

what we call a home run, there's ninety-nine

9

success rate. For axial back pain most likely

10

secondary to post back surgery syndrome, then

11

the trial success rate is about seventy-five

12

percent.

13

14

Q. What percent of people have had

15

percutaneous discectomies and have stimulators
put in afterwards?

16

17

MR. PLATTA: Objection. Are you
asking about in general or specialists?

18

19

MR. COFFEY: In general.

20

21

A. I don't know.
Q. In your practice based upon your
experience, less than one or two percent?

22

23

MR. PLATTA: On success rates,
right?

24

who

25

A. That's actually -- of patients
receive the disc decompression end up getting

a

0044

1 ANDREW M.G. DAVY, M.D.

44

2 spinal cord stimulator trial.

3 Q. In that one to two percent what
4 has been the causation for that?

5 A. That's the ten percent of
failures

6 from the disc decompression in my practice.

7 Q. When one has a failure, what is
8 the result of a failure?

9 MR. PLATTA: Of the disc
10 decompression?

11 MR. COFFEY: Yes.

12 A. Less than a fifty percent
13 reduction in their pain.

14 Q. Now, that finding, do you
consider

15 that to be a subjective or objective finding?

16 A. The pain?

17 Q. Yes.

18 A. Purely subjective.

19 Q. How much time goes by before you
20 determine that the procedure would be a
21 failure?

22 A. In the neck about between three
23 and six weeks, in the lower back about six to
24 eight weeks.

25 Q. The Stryker website talks about

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ANDREW M.G. DAVY, M.D.

45

2 six months, do you disagree with what they
say?

3

MR. LUNDGREN: Objection.

4

MR. PLATTA: Objection, as well.

5

6 you know under the federal deposition.

7

8 differ then with the Stryker material that

says

9 you should wait longer to monitor, are you
10 seeing the patient you can determine within
11 certain weeks as opposed to several months?

12

MR. PLATTA: Over objection.

13

MR. LUNDGREN: Objection.

14

15 directions to the witness as to his
16 testimony, he's allowed to say I don't
17 know if he doesn't know.

18

19 but I think he does know.

20

21 MR. PLATTA: Could you voir dire
22 him because it wasn't done in the
beginning.

23

24 MR. COFFEY: I'm not voir diring
25 him. I have two hours, I'm not voir
diring him.

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ANDREW M.G. DAVY, M.D.

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2

MR. LUNDGREN: I would suggest

has

3

he read it.

4

5

Q. Are you familiar with Stryker's literature?

6

A. What do you mean by familiar?

7

MR. PLATTA: Over objection.

8

9

10

11

12

13

14

15

Q. Are you aware that they say on their website that you should look out about six months to determine whether there's a success or failure of the procedure?

16

A. I'm aware that it can take that

17

18

19

20

21

22

23

24

25

long for patients to get full recovery, but it's difficult when the patient is complaining of pain.

Q. That's a subjective complaint?

A. Right.

MR. PLATTA: Over objection.

Q. So, there's no objective test you're able to employ on that, it's only the subjective complaint of a patient, correct?

MR. PLATTA: Objection.

A. Correct, with regard to the success of the response, yes.

Q. And did you bring your entire

0047

1 ANDREW M.G. DAVY, M.D.

47

2 file with you today?

3 A. Yes.

4 Q. Can I see that?

5 (Document submitted.)

6 Q. Thanks. This is the entire file

7 that you have for the plaintiff in this

8 lawsuit, Adonna Frometa?

9 A. Yes.

10 MR. LUNDGREN: That's the
original

11 copy, right?

12 THE WITNESS: Yes.

13 Q. Now, when did you first learn

14 about that you were going to be needed to come

15 here to testify, when you received a subpoena

16 from our office?

17 A. Yes.

18 Q. Since you received that subpoena

19 and not to ask about your discussions with

your

20 counsel because those are privileged and I

21 don't want to know about those, have you ever

22 spoken with the attorney sitting next to you?

23 A. Yes.

24 Q. When is the first time you spoke

25 with him?

0048

1 ANDREW M.G. DAVY, M.D.

48

2 A. Regarding this case or in
general?

3 Q. Well, we will go in general and
4 then regarding this case.

5 A. I met him at a Christmas party.

6 MR. PLATTA: Over objection.

7 Q. At whose Christmas party?

8 MR. PLATTA: Over objection.

9 A. Total Neuro Care, P.C.

10 Q. What year was that?

11 A. Last year, '07.

12 MR. PLATTA: Again, over
13 objection.

14 Q. So the, Total New York Christmas
15 party, where was that?

16 A. Total Neuro Care.

17 MR. PLATTA: Over objection.

18 A. In New York, Queens.

19 Q. Where did they have their
20 Christmas party?

21 MR. PLATTA: Over objection you
22 can answer.

23 A. Where?

24 Q. Where?

25 A. It's called Terrace on the Park.

0049

1 ANDREW M.G. DAVY, M.D.

49

2 Q. At Total Neuro Care who are the
3 doctors that are involved?

4 MR. PLATTA: Objection.

5 MR. COFFEY: Off the record.

6 (Whereupon, a discussion was held
7 off the record.)

8 Q. Where was the Christmas party?

9 MR. PLATTA: Objection.

10 A. Queens, Terrace on the Park.

11 Q. Who are the doctors involved in
12 Total Neuro Care?

13 MR. PLATTA: Objection.

14 A. I think Dr. Krishna.

15 Q. And this attorney was at the
16 Christmas party?

17 MR. PLATTA: Objection.

18 A. Yes.

19 Q. Did he speak to you?

20 MR. PLATTA: Objection.

21 A. We met, hi, how are you.

22 Q. What did he say other than hi,
how

23 are you?

24 MR. PLATTA: Objection.

25 A. That's it.

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ANDREW M.G. DAVY, M.D.

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2

Q. Who introduced you to him?

3

MR. PLATTA: Objection.

4

A. I don't remember.

5

Q. Was it another attorney?

6

MR. PLATTA: Objection.

7

A. I don't remember.

8

Q. Was it Dr. Krishna?

9

MR. PLATTA: Objection.

10

A. Probably Dr. Krishna.

11

Q. And how did he introduce you,

what

12 did he say about him?

13

MR. PLATTA: Objection.

14

A. This is Mr. Platta, he recently

15

started his own law practice.

16

Q. And when did Ms. Frometa first go

17

to your office?

18

A. I don't remember, it's in there.

19

Q. It would be in the record?

20

A. Yes.

21

Q. Since meeting him at the

Christmas

22

party at the Terrace on the Park did you meet

23

him ever again?

24

MR. PLATTA: Objection.

25

A. No.

0051

1 ANDREW M.G. DAVY, M.D.

51

2 Q. Did you ever speak to him again?

3 A. Yeah, over the phone.

4 Q. How many times?

5 MR. PLATTA: Over objection.

6 A. Maybe two or three.

7 Q. When was the first time out of
the

8 two or three times?

9 A. I think -- I don't remember.

10 Q. Was it in 2007 right after the
11 Christmas party?

12 A. No, I think it was when I got
your
13 subpoena.

14 MR. PLATTA: Objection.

15 Q. What did he say, what did he cal
16 you up for?

17 A. I think I called him up and told
18 him to get in touch with my attorney.

19 Q. How did you know he was involved
20 in this, was his name on the subpoena, also,
21 that you read?

22 MR. PLATTA: Over objection.

23 A. I don't know, I don't remember
24 seeing the subpoena.

25 Q. Do you get many referrals from
Dr.

0052

1 ANDREW M.G. DAVY, M.D.

52

2 Krishna?

3 MR. PLATTA: Over objection.

4 A. Yes.

5 Q. How many referrals approximately
6 per year do you get from Dr. Krishna?

7 MR. PLATTA: Over objection.

8 A. I don't know.

9 Q. More than fifty?

10 MR. PLATTA: Over objection.

11 A. Yes.

12 Q. More than a hundred?

13 MR. PLATTA: Over objection.

14 A. Probably more than a hundred,
yes.

15 Q. About a hundred?

16 A. Probably more than a hundred.

17 MR. PLATTA: Objection.

18 Q. What kind of doctor is Dr.
19 Krishna?

20 A. A neurologist.

21 Q. How did you meet Dr. Krishna,
were

22 you guys on the same hospital staff or how did
23 you meet Dr. Krishna?

24 A. We met in jail.

25 MR. PLATTA: It's a joke.

0053

1 ANDREW M.G. DAVY, M.D.

53

2 MR. LUNDGREN: No, it's true.

3 A. As a resident I was working in
the

4 Manhattan house of detention as a hospital
5 doctor, every person who gets arrested has the
6 right to have a physical exam, so I was a
house

7 doctor in the Manhattan house of detention and
8 so was Dr. Krishna so that's where we met.

9 Q. What year was that?

10 A. Let's see, probably 1992 or '93.

11 Q. In a few of these papers in here,
12 we'll probably finish before the 10:00 time,
13 but there's a few papers in here that we don't
14 have so we are going to make copies of them
and

15 your attorney can oversee it so we're not
going

16 anywhere with them, but we have want to make
17 photocopies.

18 MR. PLATTA: I will object to
19 that. The doctor can make a copy for
you

20 and provide you with a copy.

21 MR. COFFEY: He can use our
22 photocopier to make a copy. If you
would

23 like him to do that, that's fine, too.

24 MR. LUNDGREN: You can distribute
25 it to everyone.

0054

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ANDREW M.G. DAVY, M.D.

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2

trial

MR. COFFEY: Absolutely, the

3

have

is coming up, we would just like to

4

the copy today and we will make it.

5

THE WITNESS: Off the record?

6

MR. COFFEY: Off the record.

7

(Whereupon, a discussion was held

8

off the record.)

9

Q. This is your entire file?

10

A. Yeah.

11

Q. Any film, anything else that you

12 have?

13

A. There's a procedure note that I

14

did a procedure yesterday, I haven't done the

15

note yet, that's the stimulator trial.

16

Q. There was a procedure you did

17

yesterday, what procedure did you do

yesterday?

18

A. Lumbar spinal cord stimulator

19

trial.

20

Q. And how many leads did you use on

21

that?

22

A. Three.

23

Q. Did any discussion come up with

24

Mr. Platta about the procedure that you were

25

going to do or procedures that you had done on

0055

1 ANDREW M.G. DAVY, M.D.

55

2 his client?

3 MR. PLATTA: Over objection. Can
4 you be more specific as to what you're
5 asking him?

6 A. I don't remember. I don't
7 remember.

8 Q. Did he know you were going to be
9 doing the lumbar spinal cord stimulator
10 yesterday?

11 A. Yeah, I think he did, yeah.

12 Q. What did you say to him, what did
13 he say to you about it?

14 MR. PLATTA: What was the
15 question?

16 (Whereupon, the reporter read
back

17 the requested material.)

18 Q. That is correct, you did a lumbar
19 one, correct?

20 A. Correct.

21 Q. Not cervical?

22 A. Not cervical.

23 Q. What was the discussion that you
24 had with the attorney?

25 A. Well, we spoke about today and --

0056

1 ANDREW M.G. DAVY, M.D.

56

2 MR. PLATTA: Again, over
3 objection.

4 A. And then there was some
discussion

5 regarding coverage, her no fault coverage for
6 the procedure. My staff spoke to Mr. Platta
7 because the no fault company said he would
know

8 how much is left in the no fault account to
see

9 if she had coverage for the procedure.

10 Q. Was there any discussion about
11 whether the procedure would be done if there
12 was or wasn't any no fault coverage?

13 MR. PLATTA: Over objection.

14 A. No.

15 Q. Do you have any other clients of
16 Mr. Platta's as your patients?

17 MR. PLATTA: Over objection.

18 A. I don't know.

19 Q. Have you ever spoken with him
20 about any of his other clients?

21 MR. PLATTA: Over objection.

22 A. No.

23 Q. The first procedure you did on
Ms.

24 Frometa, what procedure was that?

25 A. I think it was a lumbar epidural

0057

1 ANDREW M.G. DAVY, M.D.

57

2 steroid injection.

3 Q. I will give you this back if it
4 will refresh your recollection.

5 A. It was a cervical epidural
steroid

6 injection.

7 Q. So, it would only be what you
have

8 in that file?

9 A. Yes.

10 Q. Any films that you reviewed would
11 have been reports of films?

12 A. Reports of the MRI's are in here.

13 Q. Did you ever see the MRI's
14 themselves or you reviewed the reports?

15 A. The reports, I reviewed the
16 reports.

17 MR. PLATTA: Note my objection to
18 the question.

19 Q. Back when you had your residency,
20 what was your surgical training prior to doing
21 any of the Stryker procedures? Do you
consider

22 them surgery or a procedure or is it a
23 distinction without difference?

24 A. I think you're talking about my
25 pain fellowship.

0058

1 ANDREW M.G. DAVY, M.D.

58

2 Q. What did you do in your pain
3 fellowship?

4 A. That's where I learned how to
make

5 the wound suture, manage the wound, which is
6 the surgery part of what I do.

7 Q. What is your board certification?

8 A. Anesthesiology and pain medicine.

9 Q. So, you're not board certified in
10 surgery?

11 A. No.

12 Q. Did you ever take your surgical
13 boards?

14 A. I'm not eligible, no.

15 Q. Now, when you did your pain
16 management fellowship, what procedures did you
17 do?

18 A. Epidural steroid, stellate
19 ganglion blocks, lumbar sympathetic blocks,
20 spinal cord stimulator and spinal cord
21 stimulator implantation, intrathecal drug
22 delivery trials and intrathecal drug delivery
23 system implantation and management of these
24 systems, I had said facet joint injections,
25 sacroiliac joint injections.

0059

1 ANDREW M.G. DAVY, M.D.

59

2 Q. Do you consider the percutaneous
3 discectomy to be a procedure or a surgery?

4 A. It has a surgical code, so it's
5 treated as surgery but --

6 Q. Would the chair of the surgery
7 department agree with that at the hospital?

8 MR. PLATTA: Over objection.

9 A. I don't know.

10 Q. Do you consider it a surgery?

11 A. Yes.

12 Q. You were talking about when you
13 had your fellowship that you would do some of
14 the implants of the stimulators, so that would
15 be considered a procedure or a surgery?

16 A. Surgery.

17 Q. Epidural injections, do you
18 consider them surgeries or a procedure?

19 A. Procedure.

20 Q. Do you know how the Stryker
21 company in their FDA application if they
talked

22 about the percutaneous discectomy as a surgery
23 or a procedure?

24 MR. PLATTA: Over objection.

25 A. I don't remember anything

0060

1 ANDREW M.G. DAVY, M.D.

60

2 specific.

3 Q. Well, what would you say in the
4 medical literature that's out there on the
5 percutaneous discectomy, is it considered more
6 of a surgery or a procedure?

7 MR. PLATTA: Over objection.

8 A. All procedures that I do start
off

9 -- most of them start off with a six code and
10 those are all considered surgical procedures,
11 they are surgical codes.

12 Q. But based on the literature, not
13 about the billing codes, what do you think the
14 literature talks about?

15 MR. PLATTA: Over my objection.

16 MR. LUNDGREN: Note my objection.

17 A. I think any time you go inside
the

18 body it's surgery, they are surgical
19 procedures.

20 Q. Now, when you do the epidural
21 injections, you do those in your office?

22 A. Most of the time.

23 Q. And sometimes you do them in the
24 hospital?

25 A. Very rarely.

0061

1 ANDREW M.G. DAVY, M.D.

61

2 Q. What would be the indication what
3 will be done in the hospital as opposed to the
4 office?

5 A. When the patient insists they are
6 totally asleep for the procedure.

7 Q. Looking at your records when did
8 you first see Ms. Frometa?

9 A. April 20th, 2007.

10 Q. Did she tell you she was
employed?

11 A. Yes, she was working as a
12 waitress.

13 Q. Had she been working since the
14 accident up until then or not?

15 A. She was working two jobs. She
16 was, also, a flight attendant. She was not
17 able to work as a flight attendant.

18 Q. Do you know if she had been
19 working as a flight attendant in the couple
20 days before she came to see you?

21 A. I don't know for sure but I think
22 so.

23 Q. Did she tell you ever that she
had
24 been involved --

25 A. I'm sorry, before she came to see

0062

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ANDREW M.G. DAVY, M.D.

62

2

me?

3

Q. Yes.

4

A. No, she said she was only working as a waitress. I think she stopped working as a flight attendant because of her injuries.

7

Q. So, she had stopped working as a flight attendant?

9

A. Yes.

10

Q. Do you know how long she had worked as a flight attendant for?

12

A. No.

13

of

14

time you believe?

15

A. I think so.

16

had

17

been involved in two motor vehicle accidents before this accident?

19

A. She did not.

20

Q. Were histories important?

21

A. Yes.

22

Q. Why is a history important?

23

percent

24

of your diagnostic information.

25

Q. So, if a history is not given to

0063

1 ANDREW M.G. DAVY, M.D.

63

2 you correctly, can that affect causation?

3 MR. PLATTA: Objection.

4 A. It can affect your diagnosis.

5 Q. If certain factors are given or
6 not given, if is there any omissions in a
7 history, can they affect the causation?

8 MR. PLATTA: Objection. Asked

and

9 answered.

10 A. Yes.

11 Q. So, you're not aware that she had
12 been involved in two motor vehicle accidents
13 before this accident?

14 MR. LUNDGREN: Objection.

15 MR. PLATTA: Over objection.

16 A. No.

17 Q. Did you give her a form when she
18 came to your office to fill out asking if she
19 had been involved in any other accident?

20 A. I have it written down here and
21 it's probably in my typed report.

22 MR. PLATTA: Again, over
23 objection.

24 A. That she has no prior injuries to
25 her neck and lower back.

0064

1 ANDREW M.G. DAVY, M.D.

64

2 Q. Did you ask if she had any prior
3 auto accidents?

4 A. I'm not sure if I specifically
5 asked about motor vehicle accidents.

6 Q. Now, do you give a questionnaire
7 to the patient to fill out when they come in
to
8 your office?

9 A. Insurance questionnaire.

10 Q. What pain did she talk to you
that
11 she was having when she first came to see you?

12 A. Neck and low back pain.

13 Q. What date was this on?

14 A. 4/20/07.

15 Q. That was her first visit to you?

16 A. Yes.

17 Q. And what films did you review at
18 that time, if any, or did you send her for
19 MRI's or something else?

20 A. I reviewed MRI reports, not
films.

21 Q. Which reports did you review?

22 MR. PLATTA: Just to clarify,
23 reports or films?

24 MR. COFFEY: Reports.

25 A. I reviewed an MRI report of the

0065

1 ANDREW M.G. DAVY, M.D.

65

2 lower back done on March 13th, 2007 and an MRI
3 of the neck done on the same day.

4 Q. Now, based upon looking at those
5 MRI reports did she have any underlying
6 degenerative disc disease that preexisted this
7 accident?

8 A. There's mention of a spur in the
9 lower back MRI, that could be consistent with
10 degeneration.

11 Q. Now, Doctor, this spur that's
12 shown on an MRI report that's taken
13 approximately one month after the accident,
14 that would be consistent with degenerative
15 changes that would have been existing before
16 this accident?

17 A. Yes.

18 MR. PLATTA: Over objection.

Neck

19 or back, which MRI?

20 MR. LUNDGREN: Objection.

21 MR. COFFEY: The spur that he
just

22 spoke about.

23 MR. PLATTA: Cervical or lumbar?

24 MR. COFFEY: I have no idea.

25 MR. PLATTA: Can you specify that

0066

1 ANDREW M.G. DAVY, M.D.

66

2 first?

3 MR. COFFEY: I will move on.

4 Don't waste my time.

5 MR. PLATTA: Fine. Note my
6 objection.

7 Q. Where was the spur?

8 A. In the lower back.

9 Q. So, is it fair to say that the
10 spur would be consistent with degeneration
that

11 was present when the accident occurred?

12 MR. PLATTA: Over objection.

13 A. Yes.

14 Q. Is there anything else you note
in
15 the reports that talk to degeneration?

16 MR. PLATTA: Again, over
17 objection.

18 A. No.

19 Q. Is it possible that the spur
could
20 have been caused by the two prior motor
vehicle

21 accidents that she had been involved in?

22 MR. LUNDGREN: Objection.

23 MR. PLATTA: Objection.

24 A. Yes.

25 Q. Is it possible that the
herniation

0067

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2

could have been caused by the two prior motor

3

vehicle accidents that she had been involved

4

in?

5

MR. PLATTA: Objection.

6

MR. LUNDGREN: Objection.

7

A. I don't know.

8

Q. So, which other physicians had

she

9

seen, if any, other than you that you are

aware

10

of?

11

A. Dr. Krishna referred her to me,

12

just Dr. Krishna, and she was doing therapy.

13

Q. What was your recommendation to

14

her when she first came to you?

15

A. Lumbar epidural steroid injection

16

times three, cervical epidural steroid

17

injections, facet nerve injections to the neck

18

and lower back, radio frequency lesioning of

19

the facet nerves if the diagnostic injections

20

decrease the pain by fifty percent or more and

21

percutaneous disc decompression if the

22

epidurals failed to decrease her pain.

23

Q. So, how many times did she come

to

24

you for epidural injections approximately?

25

A. About six times.

0068

1 ANDREW M.G. DAVY, M.D.

68

2 Q. And that's six times for the
3 lumbar and six times for the cervical?

4 A. Three.

5 Q. So, it's three for the cervical,
6 three for the lumbar?

7 A. Yes.

8 Q. What dates were they, you would
do

9 the cervical and lumbar on the same date,
10 correct?

11 A. No, different dates, cervical
12 number one, 4/26/07, cervical number two
13 5/3/07, cervical number three 5/10/07, lumbar
14 number three 10/24/07, lumbar epidural steroid
15 injection number two 10/17/07 and lumbar
16 epidural steroid injection number one
10/10/07.

17 Q. So, then you, also, did something
18 on the lesions?

19 A. Yeah, I did facet blocks I think
20 in the neck and then radio frequency lesions
in
21 the neck.

22 MR. PLATTA: Do you want the
23 dates?

24 MR. COFFEY: Yes, sure.

25 Q. What's a facet block?

0069

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69

2 MR. PLATTA: Do you want him to
3 give you the dates or move on?

4 MR. COFFEY: I'll get the date

and

5 then I'll ask him that.

6 A. Lumbar -- there's an error here,
7 cervical radio frequency lesioning number two
8 on the right neck 10/4/07, diagnostic facet
9 nerve injection on the left neck 10/3/07.

10 Q. Diagnostic what?

11 A. Facet nerve injection.

12 Q. That's the left neck and what day
13 was that?

14 A. 10/3/07, there's a lot of errors
15 here, I think 9/27/07 it should be on the
right

16 neck, diagnostic injections on the right neck
17 but it says left.

18 Q. That's 9 what?

19 A. 9/27/07, that's all I have here.

20 Q. So, it was on the cervical radio
21 frequency and a diagnostic facet nerve
22 injection to the left neck, so there was no
23 lumbar facet blocks?

24 A. Correct.

25 Q. What is your charge on the

0070

1 ANDREW M.G. DAVY, M.D.

70

2 diagnostic facet nerve injections for the left
3 neck, what is your billing for that and what
do
4 you get reimbursed by no fault?

5 A. The no fault reimbursement, I
6 don't remember what we billed.

7 MR. PLATTA: Objection.

8 Q. What is that?

9 A. No fault the first level is \$130
10 for the first level and half for each
11 successive level.

12 Q. Are the diagnostic different from
13 the other one if you have a week apart on the
14 two?

15 A. Yes, the diagnostic, I think, is
16 reimbursed less than the radio frequency. I
17 don't know the numbers.

18 Q. Do you know what the radio
19 frequency reimbursement is?

20 A. I don't remember.

21 Q. What you did in total for her was
22 the three times cervical epidurals, three
times

23 lumbar epidurals, the cervical injections, the
24 diagnostic facet nerve injections, the pain
25 stimulator, so there was no lesioning or am I

0071

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ANDREW M.G. DAVY, M.D.

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--

3

A. Yes, I did do -- here I have
4 lesioning of the --

5

Q. Is that the right neck?

6

A. I think it's the left neck. I
7 don't see the procedure for the other side.

8

Q. Now, how long does that radio
9 frequency procedure take?

10

A. About a half an hour for five
11 levels.

12

Q. And you did five levels here?

13

A. Yeah.

14

Q. The nerve injections are about
15 three minutes you said?

16

A. The diagnostic facets, about ten
17 minutes.

18

Q. Ten minutes total?

19

A. For five levels, yeah.

20

the

Q. When they did the cervical and

21

lumbar epidurals, those were --

22

A. About three to six minutes each.

23

MR. PLATTA: Epidurals, right?

24

THE WITNESS: Yes.

25

Q. And the stimulator, the trial,

how

0072

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ANDREW M.G. DAVY, M.D.

72

2

long did that take, that procedure?

3

A. About two hours.

4

Q. You did that yesterday?

5

A. Yes.

6

Q. Where did you do that, in the

7

hospital?

8

A. In my office.

9

Q. In your office?

10

A. Yes.

11

Q. And did you do any of those

12

yesterday or only one of them?

13

A. One patient?

14

Q. Yes.

15

A. I did two patients.

16

Q. Two patients with this procedure?

17

A. Yes.

18

Q. Now, in the April 25th of 2007

19

report in your summary you talk about that

20

there is no preexisting condition exists that

21

affects causality, if there had been other

22

motor vehicle accidents that you don't know

23

about, could that affect the causality?

24

MR. PLATTA: Objection.

25

MR. LUNDGREN: Objection.

0073

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2

MR. PLATTA: You're talking about motor vehicle accidents or injuries?

4

MR. COFFEY: Motor vehicle accidents, we don't know if there's injuries.

7

MR. PLATTA: If you don't know, you don't know but, again, over objection.

10

11

12

13

14

11
15

15
16

10
1117
18

18

19

no

20

21

22

23

24

0074

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ANDREW M.G. DAVY, M.D.

74

2

3

Q. Were you ever told about Dr. Baboo's opinion from counsel?

4

A. No.

5

MR. PLATTA: Over objection.

6

7

Q. Did you ever review Dr. Krishna's records of Ms. Frometa?

8

A. No.

9

10

Q. Did you ever speak to Dr. Krishna about Ms. Frometa?

11

A. No.

12

aware

13

if any other doctor had operated on Ms.

14

Frometa's back?

15

A. Dr. Baboo operated on her.

16

Q. What did he do?

17

18

A. I think he did a discectomy or laminectomy.

19

that

20

on?

21

A. No.

22

23

Q. Do you know if it was in the cervical or the lumbar?

24

A. Lumbar.

25

Q. Do you know what level it was on

0075

1 ANDREW M.G. DAVY, M.D.

75

2 the lumbar?

3 A. No.

4 Q. Prior to doing the procedure when
5 was the last time prior to that that Ms.

6 Frometa had been to your office?

7 MR. PLATTA: Which procedure?

8 MR. COFFEY: Yesterday's.

9 A. April 23rd, 2008.

10 Q. April what?

11 A. 23rd, 2008.

12 Q. What was discussed at that
13 appointment?

14 A. She decided to do the spinal cord
15 stim trial for the neck and lower back.

16 Q. Is there any reason why it was
17 only done for the lower back?

18 A. We plan to do the neck.

19 Q. Is that indicated in your notes?

20 A. Yes.

21 Q. Now, were you aware that she had
22 a

22 trial coming up?

23 MR. PLATTA: Besides being
24 notified by you?

25 MR. COFFEY: Right.

0076

1

ANDREW M.G. DAVY, M.D.

76

2

A. On the 23rd?

3

Q. Yes.

4

A. I don't think we spoke about that.

5

I don't think we spoke about that. We spoke

6

about her giving me a copy of an IME for review

7

and, yes, that visit was specifically to discuss the stimulator because at her last visit a month earlier it was brought up and she

was thinking about it.

10

Q. And she wanted to give you what IME for review?

12

A. One she had since the last time I saw her, insurance company IME.

13

Q. What's the last MRI that you were able to see of her, if any, other than the --

14

A. The initial ones, I haven't seen any since then.

15

Q. Did you not believe that she needed any further MRI's to take a look at how the back was doing?

16

MR. PLATTA: Over objection.

17

A. No, I didn't think she needed any.

18

Q. And you've never seen the MRI's themselves?

19

0077

1 ANDREW M.G. DAVY, M.D.

77

2 A. The films, no.

3 Q. Did you believe they would be
4 important to see or not necessarily?

5 MR. LUNDGREN: Objection.

6 A. No.

7 MR. PLATTA: Over objection.

8 A. Not important.

9 Q. Why are they not important for
10 you?

11 MR. PLATTA: Over objection.

12 A. Because I'm treating her pain
13 based on her history and physical examination
14 and the pain generator, she has no neurologic
15 deficits, so I don't think a repeat MRI was
16 indicated.

17 Q. When you say no neurological
18 deficits, what does that mean?

19 A. Motor loss, bowel or bladder
20 dysfunction.

21 Q. Any of the things that she is
22 talking about are all subjective and there's
no
23 objective clinical findings; is that correct?

24 MR. PLATTA: Objection.

25 MR. LUNDGREN: Objection.

0078

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2

A. That's not correct, there are
3 objective clinical findings, physical exam,
the

4

MRI.

5

Q. After the procedures if she had
6 had the percutaneous discectomy, wouldn't
there

7

have been a need to see a subsequent MRI

8

several months out to see how that has

9

progressed in that portion of the back or you

10 don't believe so?

11

MR. PLATTA: The nerve
stimulator?

12

MR. COFFEY: Yes.

13

A. No, that wouldn't be necessary.

14

Q. Why?

15

A. Because she did not want to have
16 anymore disc decompression, and I didn't think
17 that she needed anymore. In addition,
18 specifically to the lower back she's not a
19 candidate for disk decompression at the levels
20 where she had open surgery, that's a
21 contraindication.

22

Q. And when you did the percutaneous
23 discectomy itself, how much did you excise?

24

A. About half to one cc of disc.

25

Q. When you did the procedure, there

0079

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ANDREW M.G. DAVY, M.D.

79

2 was no protrusions or extrusions or were
there?

3

A. I'm sorry?

4

Q. When you went in there, let's
talk

5

about that procedure.

6

A. There was no extravasation of dye
7 beyond the confines of the annulus fibrosis.

8

Q. It was self-contained?

9

A. Yes.

10

Q. So, that would be, also,
11 consistent with a bulge then and not a
12 herniation?

13

MR. PLATTA: Objection.

14

A. No, not necessarily, either one
15 can create the same picture.

16

Q. But it's possible?

17

MR. PLATTA: Objection.

18

A. What's possible?

19

Q. Is it possible it was a bulge and
20 not a herniation?

21

MR. PLATTA: Objection.

22

A. Is it possible?

23

MR. PLATTA: Objection.

24

A. It's possible.

25

Q. But the finding of a herniation

0080

1 ANDREW M.G. DAVY, M.D.

80

2 was, also, found by a radiologist who reviewed
3 the films, you didn't review the film
yourself,

4 correct?

5 A. Of the MRI?

6 Q. The MRI?

7 A. Correct.

8 Q. So, if that radiologist had been
9 wrong in his interpretation of the film, you
10 have no other basis to either know that or not
11 know to that?

12 MR. PLATTA: Objection.

13 MR. LUNDGREN: Objection.

14 Q. Correct?

15 MR. PLATTA: Over objection.

16 A. Whether it's a herniation or a
17 bulge, right, I didn't see the film, I relied
18 on the report.

19 Q. And the dye test doesn't show
20 whether it's a bulge or herniation; is that,
21 also, correct?

22 MR. PLATTA: Over objection.

23 A. That's correct.

24 Q. But then if you take a look at
the
25 operative report, the surgical pathology
report

0081

1 ANDREW M.G. DAVY, M.D.

81

2 it talks about the specimen being .1 by .1
3 centimeters in the aggregate, so was that
4 different than one half to one?

5 MR. LUNDGREN: What report?

6 MR. COFFEY: The surgical
7 pathology report.

8 MR. LUNDGREN: That's part of his
9 records?

10 MR. COFFEY: Yes.

11 A. I don't know what that means. I
12 always ask them to quantify and they never do.

13 Q. But the aggregate, which would be
14 the total that they saw, was different than
one

15 half to one cc, right?

16 MR. PLATTA: Over objection.

17 A. No, they are describing the disc
18 as it's presented to them on the decompressor
19 probe, which is lengthwise, they have
described

20 the width of the decompressors about .1
21 centimeter, I don't know what that other .1
is.

22 Is it .1 up the shaft? I don't know.

23 Q. But now the final pathology, the
24 diagnosis on the cervical disc they call it
25 degenerated cartilaginous material, do you

0082

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ANDREW M.G. DAVY, M.D.

82

2 agree with that, that there was degeneration
in
3 that disc?

4

A. Yeah.

5

Q. And that would have been the
6 degeneration that was preexisting this
7 accident?

8

A. I don't know. It could have been
9 as a result of the accident.

10

Q. And it could have, also, been
11 there before the accident?

12

MR. PLATTA: Over objection.

13

A. Yeah.

14

Q. But wouldn't that be consistent
15 with the MRI that has a bony spur, wouldn't
16 that all be consistent with degeneration that
17 would have been preexisting?

18

MR. PLATTA: Over objection.

19

A. The bony spur is for lower back
20 MRI, not the neck.

21

Q. Degeneration is a process that
22 goes on throughout the body, so it would,
also,

23

occur in the lumbar and the cervical spine?

24

A. Yes, pointing out that this
25 procedure was done several months after her

0083

1 ANDREW M.G. DAVY, M.D.

83

2 accident, so it's difficult to say.

3 Q. Now, when she came back for the
4 procedure that she underwent yesterday, had
she

5 been going for physical therapy?

6 A. I think so, yes, she had started
7 therapy.

8 Q. Had she been going to therapy
9 before she had the procedure?

10 A. Which one, which procedure,
11 yesterday's procedure?

12 Q. Yes.

13 A. Yes.

14 Q. Do you know where she was going
15 for physical therapy?

16 A. No.

17 Q. Did you ever review her physical
18 therapy records?

19 A. No.

20 Q. As Ms. Frometa in your opinion
21 moves forward you had recommended to her that
22 she undergoes another procedure, another pain
23 stimulator?

24 MR. PLATTA: Besides the one --

25 A. For the neck, yes, planning on

0084

1 ANDREW M.G. DAVY, M.D.

84

2 doing the neck.

3 Q. Why is that, why are you planning
4 to do the neck?

5 A. She hasn't had any significant
6 relief of her neck pain.

7 Q. And in any of the records that
you

8 took a look at did she have any nerve root
9 compression?

10 MR. PLATTA: In her neck and
beck?

11 MR. COFFEY: In her neck and
back.

12 A. No, not on the records that I
13 reviewed.

14 Q. Did you see anything about any
15 weakness in any of the records you reviewed?

16 A. No.

17 Q. Anything about radicular pain in
18 the records that you reviewed?

19 A. No.

20 Q. Were there any dire symptoms?

21 A. Let me just say that I didn't
22 review the records, I've only seen the MRI.

23 MR. LUNDGREN: Off the record.

24 (Whereupon, a discussion was held
25 off the record.)

0085

1 ANDREW M.G. DAVY, M.D.

85

2 Q. And the records you reviewed of
3 the MRIs were only the reports, correct?

4 A. Correct.

5 Q. Now, did you ever talk to a Dr.
6 Kinkadee?

7 A. No.

8 MR. PLATTA: Are you referring to
9 the life care specialist?

10 MR. COFFEY: Yes.

11 A. I spoke to a woman regarding the
12 life care stuff.

13 Q. Who was the woman, what was her
14 name?

15 A. It hasn't made it to the chart
16 yet, a HIPAA compliant release authorizing me
17 to speak to this person was faxed to me and I
18 spoke to her.

19 Q. What you talked about in that
20 discussion is not part of the chart yet, did
21 you keep notes on it?

22 A. No.

23 Q. What did she ask you?

24 A. She basically asked me the
pricing

25 and long term care for Ms. Frometa.

0086

1 ANDREW M.G. DAVY, M.D.

86

2 Q. What did you tell her?

3 A. I told her about the stimulator,

I

4 think -- I'm not sure if we spoke about the
5 pump if the stimulator didn't work, but I know
6 specifically we spoke about pricing for the
7 stimulator.

8 Q. Did you tell her about how many
9 times she would have to come to evaluate her
10 pain management needs?

11 A. Yeah, I think I did.

12 Q. What did you recommend, how many
13 times per year?

14 A. Depending on how she did with the
15 stimulator. If the stimulator did not work
and

16 we were maintaining her on medicines, at least
17 every four to six weeks. If the stimulators
18 worked, then she would only need to see me if
19 there was a problem with the stimulator or
when

20 the battery -- the power sources needed
21 changing.

22 Q. Did you give her costs about your
23 pain management consultation, how much it
would

24 be per year?

25 A. Yeah, I think I did, yeah.

0087

1 ANDREW M.G. DAVY, M.D.

87

2 Q. Do you remember how much you told
3 her it would cost?

4 A. No.

5 Q. Did you keep any notes?

6 A. No.

7 Q. There's a report that says you
8 told her or it seems to say you recommended
9 it's \$416.66?

10 MR. PLATTA: Over objection.

11 A. For what?

12 Q. For an annual one time yearly
13 annual visit, did you give her those numbers?

14 A. Maybe she asked how much the
visit

15 per month would cost, I receive \$71 most of
16 time so maybe --

17 Q. If there's a \$71 charge, you
18 didn't expect to receive \$416.66?

19 MR. PLATTA: Over objection.

20 A. I don't know where that number
21 came from.

22 Q. But it didn't come from you?

23 MR. PLATTA: Over objection.

24 A. I'm not sure, I didn't keep any
25 records.

0088

1 ANDREW M.G. DAVY, M.D.

88

2 Q. Well, when we talk about the
3 physical therapy evaluations, did you
recommend
4 that?

5 A. Physical therapy?

6 Q. Yes.

7 A. Yeah, usually after her pain is
8 minimized she would need physical therapy.

9 Q. Would it be for life, for a
period

10 of time or something else?

11 MR. PLATTA: Over objection. You
12 want to rephrase the question?

13 Q. The physical therapy, did you
tell

14 her in the conversation --

15 A. In my practice, probably not for
16 life, that's not cost effective.

17 Q. Did you tell her how much it
would

18 have cost?

19 A. For physical therapy?

20 Q. What's your experience on that?

21 A. I'm not a physical therapist so I
22 --

23 Q. You didn't give her any costs on
24 physical therapy?

25 A. No.

0089

1 ANDREW M.G. DAVY, M.D.

89

2 Q. Talking about medications and the
3 cost of medication, are you familiar with the
4 cost of medication?

5 A. Somewhat.

6 Q. When you say somewhat, how much
7 does that come down to?

8 A. I don't have the numbers offhand,
9 estimates.

10 Q. Who would have those?

11 A. I guess drug companies,
12 pharmacists.

13 Q. Talking about the cost for neuro
14 stimulator implantation, what is the cost
15 approximately per unit on those?

16 MR. PLATTA: Which one, permanent
17 or trial?

18 MR. COFFEY: The neuro stimulator
19 trial.

20 A. Cost to who, cost of the
21 equipment, the physician?

22 Q. Cost for the instrument itself?

23 A. For the trial?

24 Q. Yes.

25 A. Maybe \$25,000 to \$30,000.

0090

1 ANDREW M.G. DAVY, M.D.

90

2 Q. For the neuro stimulator
3 implantation, what's the cost for that unit?

4 A. That cost again plus the pulse
5 generator?

6 Q. What is that about?

7 A. Which is between \$30,000 to
8 \$50,000.

9 Q. And then is that what they get
10 reimbursed for it or is that the cost?

11 A. I think that's the charges.

12 Q. What typically is paid by Comp?
13 MR. PLATTA: Objection.

14 A. Don't know about the equipment.

15 Q. You don't know?

16 A. No, not for the pulse generator,
17 no.

18 Q. For the battery replacement for
19 neuro stimulator, is that a different cost?

20 A. That's the same cost of the pulse
21 generator plus the physician's fees for
putting

22 it in plus the hospital and anesthesia fee.

23 Q. How much is that approximately?

24 A. Maybe about \$60,000.

25 0. Each time it's done or would that

0091

1 ANDREW M.G. DAVY, M.D.

91

2 be for life?

3 A. Each time -- it has to be
replaced

4 every seven to nine years.

5 Q. So, putting in a new battery for
6 the neuro stimulator would be \$60,000?

7 A. Yes.

8 Q. When people go in for routine
9 follow-ups for pain management, do you know
10 what you charge per visit?

11 A. Yeah, \$400.

12 Q. What do you get reimbursed
13 typically?

14 MR. PLATTA: Over objection.

15 A. Between \$38 and \$71.

16 Q. Is there a separate schedule for
17 people who don't have insurance coverage?

18 MR. PLATTA: Over objection.

19 A. I don't understand the question.

20 Q. If someone doesn't have insurance
21 coverage, what are they paying for a visit?

22 A. Usually --

23 MR. PLATTA: Over objection.

24 A. If they are paying cash, I will
25 cut my fee -- my charges in half usually.

0092

1 ANDREW M.G. DAVY, M.D.

92

2 Q. Is it cut in half from what the
no
3 fault pays?

4 A. No, my charges.

5 Q. If it was \$400, if they paid
cash,
6 it would be \$200?

7 A. Yes.

8 MR. PLATTA: Approximately,
9 everything is approximately.

10 A. Yeah, approximately, I mean, if
11 they can afford.

12 Q. Are you involved currently in any
13 litigation that's ongoing?

14 MR. PLATTA: Objection. What
kind
15 of litigation?

16 MR. COFFEY: Any kind.

17 MR. PLATTA: Against the doctor?

18 A. Malpractice, testifying? I don't
19 understand the question.

20 Q. Are you currently a defendant in
21 any lawsuit of any kind?

22 MR. PLATTA: Over objection.

23 Q. Civil, criminal?

24 MR. LUNDGREN: Objection.

25 MR. PLATTA: Over objection.

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ANDREW M.G. DAVY, M.D.

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MR. LUNDGREN: If you're going to go there, I'm going to get a ruling and call the judge. I'll talk to you on

the

5

side.

6

Q. Are you involved in --

7

MR. LUNDGREN: Do you want me to talk to you on the side?

8

9

Q. Have you been sued for

malpractice

10

before?

11

MR. PLATTA: Over objection.

12

A. No.

13

Q. Have you ever had your privileges

14

suspended?

15

A. No.

16

MR. PLATTA: Over objection.

17

Q. Have you ever been disciplined

18

internally by a hospital?

19

MR. PLATTA: Over objection.

20

A. No.

21

Q. Have you ever been convicted of a

22

crime?

23

MR. PLATTA: Over objection.

24

A. No.

25

MR. PLATTA: I'll ask the witness

0094

1

ANDREW M.G. DAVY, M.D.

94

2

chance

to wait until the attorneys have a

3

to make objections.

4

5

Q. Are you involved in a litigation
with Monica Paul?

6

MR. PLATTA: Over objection.

7

A. Yes.

8

Q. What kind of case is that?

9

MR. PLATTA: Over objection.

10

MR. LUNDGREN: Objection.

11

12

MR. PLATTA: Counselor, I'm going
to leave that to you.

13

want

MR. COFFEY: Is that what you

14

to talk to me about?

15

MR. LUNDGREN: Yes.

16

(Whereupon, a recess was taken
from 9:48 a.m. to 9:54 a.m.)

17

18

19

MR. LUNDGREN: There was a
question regarding a lawsuit involving

a

20

Monica Paul and I objected with regard

to

21

that. There was discussions outside,

and

22

I would tell counselor it's a public

23

lawsuit, I can state on the record that

24

at this point there's a pleading and

25

that's it.

0095

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ANDREW M.G. DAVY, M.D.

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MR. COFFEY: Okay, and if you can
give us a copy of that pleading.

3

4

MR. PLATTA: I'm objecting to the
request. It's a public record. You

can

6

obtain it from the court system.

7

8

MR. COFFEY: I'm just saying as
courtesy. We are going to move on.

9

10

MR. LUNDGREN: Take it under
advisement.

11

12

13

14

form

15

16

17

18

19

20

21

22

didn't

23

24

25

Q. Definitively based upon the
reports you reviewed of the MRI's you can't
tell if the herniations preceded the accident?

MR. PLATTA: Objection to the

of the question unless you want to ask
rephrase it.

Q. Do you understand what I asked?

A. Rephrase it.

Q. Can you tell if the herniations
preceded the accident?

A. No.

MR. PLATTA: No, meaning it

precede or you cannot.

THE WITNESS: I cannot tell.

Q. So, that could potentially, also,

0096

1 ANDREW M.G. DAVY, M.D.

96

2 affect the causation; is that correct?

3 MR. PLATTA: Over objection.

4 A. What could affect the causality?

5 Q. That if the herniations preceded
6 the accident, there could be a causation issue
7 whether this motor vehicle accident caused the
8 herniations or not?

9 A. Yes.

10 MR. PLATTA: We are talking about
11 imaginary situation, purely
hypothetical,

12 counselor, correct?

13 MR. COFFEY: It's not a
14 hypothetical. It's based on what we
were

15 talking about.

16 MR. PLATTA: I understand, but
17 he's talking about an accident that has
18 no treatment.

19 MR. COFFEY: If there were other
20 accidents, we will ask your client that
21 at trial.

22 MR. PLATTA: This is right now
for
23 purposes of this deposition, it's a
24 hypothetical.

25 MR. COFFEY: It's not a

0097

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ANDREW M.G. DAVY, M.D.

97

2

hypothetical. It's talking about

3

causation. Do you have information

about

4

prior accidents where she had injuries?

5

MR. COFFEY: We know your client

6

was involved in prior accidents.

7

MR. PLATTA: And injuries?

8

MR. COFFEY: That's not my

9

question.

10

MR. PLATTA: That's why I'm

saying

11

it's a hypothetical.

12

Q. Now, when a herniation is

13

sustained from the onset, is there significant

14

pain typically?

15

A. Typically there is.

16

Q. Do typically patients go

17

immediately back to work for several days

18

afterwards if they had that much pain right

19

away?

20

A. Because pain is subjective I

21

cannot answer that, some patients are able to,

22

some patients are not able to.

23

Q. You have no records of knowing

24

whether in the several days after the accident

25

if Mr. Frometa went to work as a flight

0098

1 ANDREW M.G. DAVY, M.D.

98

2 attendant?

3 A. Don't know.

4 Q. Could that be important?

5 MR. PLATTA: Over objection.

6 A. It could.

7 Q. And why could it be important?

8 MR. PLATTA: Over objection.

9 A. It could indicate that she is

able

10 to work through pain.

11 Q. If pain is subjective, it could,
12 also, indicate that there was the absence of
13 pain?

14 MR. PLATTA: Objection. You're
15 using hypothetical.

16 Q. Hypothetically, someone not able
17 to do something could, also, say there is some
18 subjectivity --

19 MR. LUNDGREN: Objection.

20 MR. PLATTA: Over objection.

21 A. Right.

22 Q. Did she have any weakness in the
23 C-4 area that radiated in to her shoulders?

24 A. I didn't note any weakness.

25 Q. Did you notice any tingling in
the

0099

1 ANDREW M.G. DAVY, M.D.

99

2 hands?

3 A. Decreased sensation on the right
4 at C6 to C8.

5 Q. And what was that?

6 A. Light touch on physical exam.

7 Q. Now, when you did a discogram,
did

8 that show the disc was beyond the normal

9 margins on her discogram or not, was she
within

10 the normal margins?

11 A. It was contained, the herniation
12 was contained.

13 Q. Typically in your patients is
most

14 degeneration in the L5, S1 area?

15 MR. PLATTA: Objection.

16 Q. Is that the most common area to
17 have lumbar degeneration?

18 A. To have herniation but not
19 necessarily degeneration.

20 Q. Typically what causes
21 degeneration?

22 MR. PLATTA: Over objection.

23 A. The body's response to injury and
24 healing, the release of inflammatory
mediators.

25 Q. Now, if there was an L5, S1

0100

1 ANDREW M.G. DAVY, M.D.

100

2 compression, she would have had radiating pain
3 on the left or right side in to the legs, did
4 you see that at all?

5 MR. PLATTA: Over objection.

6 A. Yes, as evidenced by positive
7 straight leg raises on both sides sitting and
8 supine.

9 Q. Now, are you familiar with the

New

10 England Journal of Medicine?

11 A. Yes.

12 Q. Have you read any of the studies
13 about herniations and that certain percentages
14 of them shrink and in ninety-five percent of
15 them they are reabsorbed?

16 MR. PLATTA: Over objection.

17 MR. LUNDGREN: Objection.

18 Q. Are you familiar with that study?

19 A. I'm familiar that ninety to
20 ninety-five percent of acute low back pain
21 resolves on its own.

22 Q. So, in that percent, the ninety

to

23 ninety-five percent of the time they would do
24 just as well without the surgery typically?

25 MR. PLATTA: Over objection.

0102

1 ANDREW M.G. DAVY, M.D.

102

2 that?

3 Q. In your review of the MRI reports
4 what did you see on the films that would have
5 precipitated surgery?

6 MR. PLATTA: Can you repeat the
7 question?

8 (Whereupon, the reporter read
back

9 the requested material.)

10 MR. PLATTA: What did you see on
11 the films?

12 Q. On the reports?

13 A. Disc herniations the back and
14 neck.

15 MR. LUNDGREN: Counselor, it's
16 10:04, you have three more minutes for
17 the five-minute break.

18 MR. COFFEY: Yes.

19 Q. Did you ever speak with Mr.
Platta

20 about when you would be doing the procedures?

21 A. No.

22 Q. Did Ms. Frometa ever talk to you
23 about the timing of the surgical procedures?

24 MR. PLATTA: Over objection.

25 A. I don't understand.

0103

1 ANDREW M.G. DAVY, M.D.

103

2 Q. Did she talk to you about when
you
3 would do them?

4 A. Yes.

5 Q. When did she want them done, as
6 soon as possible or what was her --

7 A. No, she's always been reluctant
to
8 have procedures, she's afraid of needles.

This

9 last procedure took her four weeks to decide.
10 Usually it's several visits and discussions
and

11 then she comes for the procedure so in terms
of

12 -- I don't know what the question is, in terms
13 of that, yes, we spoke about when to do it.

14 Q. Are you being paid for your time
15 here today?

16 A. No.

17 Q. Do you plan on being paid for
your

18 time here today?

19 A. Do I plan? I had hoped.

20 Q. How much do you hope to be paid
21 for your time?

22 A. I'm not being paid.

23 MR. PLATTA: Counselor, it's

24 10:07.

25 MR. COFFEY: You just stopped.

0104

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ANDREW M.G. DAVY, M.D.

104

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3

Q. Are you being paid to testify at trial?

4

5

6

MR. LUNDGREN: You're in the middle of a question, just let him finish.

7

A. You mean today or in the future?

8

Q. Both?

9

10

A. We have not made any arrangements for any trial or testimony, me and Mr. Platta.

11

MR. PLATTA: Thank you.

12

Q. Do you anticipate being paid --

13

14

at

15

MR. PLATTA: For the record, it's 10:07, we established we were stopping at 10:07.

16

17

18

MR. COFFEY: It's 10:06 on my Blackberry, 10:05 on my watch, so first of all --

19

20

MR. PLATTA: It's 10:07 on my watch.

21

five

22

MR. COFFEY: You wasted forty-five seconds.

23

24

MR. LUNDGREN: Let him just finish.

25

MR. PLATTA: No, the judge was

0105

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ANDREW M.G. DAVY, M.D.

105

2

very clear.

3

4

MR. COFFEY: Then go call the judge while I have this question. You just wasted two minutes of my time.

5

6

7

MR. PLATTA: If you're going to raise your voice --

8

9

MR. LUNDGREN: Counselor, you can take your position, I want the doctor

out

10

of here. You've asked your question.

11

It's an innocent question.

12

13

14

15

16

17

MR. PLATTA: Right now we have an order. Counselor, you're going against the judge's hour, it's two hours deposition limit. We are done with questioning right now. That's all.

18

an

19

MR. COFFEY: I had an open question and you started talking with

20

21

objection before the time.

22

23

MR. LUNDGREN: You're fighting over nothing.

24

25

MR. COFFEY: There's something he's making a big deal about.

Q. Have you talked about being paid for your trial testimony with Mr. Platta, yes

0106

1

ANDREW M.G. DAVY, M.D.

106

2

or no?

3

A. No.

4

MR. COFFEY: That's it, we're

5

done.

6

MR. PLATTA: Thank you.

7

8

(Time noted: 10:07 a.m.)

9

10

11

ANDREW M.G. DAVY, M.D.

12

13 Subscribed and sworn to

14 before me this_____day

15 of_____, 2008.

16

17

18

Notary Public

19

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0107

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C E R T I F I C A T E

4

5 STATE OF NEW YORK)

)ss.:

6 COUNTY OF WESTCHESTER)

7

8

I, LISA M. PRENTICE, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

9

10 That ANDREW M.G. DAVY, M.D., the
11 witness whose deposition is hereinbefore set
12 forth, was duly sworn by me, and that such
deposition is a true record of the testimony
given by the witness.

13

14

by

15

I further certify that I am not
related to any of the parties to this action
blood or marriage, and that I am in no way
interested in the outcome of this matter.

16

17

2008.

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LISA M. PRENTICE
SHORTHAND REPORTER

0108

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108

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ERRATA SHEET

3

The following corrections, additions
or deletions were noted on the transcript of
the testimony which I gave in the
above-captioned matter held on 5/9/08:

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Page____Line____SHOULD READ:_____

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REASON FOR CHANGE:_____

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22

ANDREW M.G. DAVY,

M.D.

23

Subscribed and sworn to
before me this____day
of_____, 2008.

24

25

Notary Public